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Mark R. Kirkland

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EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/806,252	Applicant(s) KIRKLAND, MARK R.	
	Examiner VIREN THAKUR	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1-6,8-13 and 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.**

Claim 1 recites the limitation regarding the sandwich like product, “and being formed with a shape and dimension conforming to the shape and dimension of said vendable container.” Claim 10 recites “a sandwich-like product that is sized to conform to a vendable sealed enclosure of said container.” It is noted that it is not clear as to how only the sandwich like product contained within the sealed enclosure can be formed with a shape and dimension conforming to the shape and dimension of the vendable container, when applicant clearly shows in figure 3 and commensurate with claims 9 and 13, wherein the portion comprising the sandwich like product does not have the shape and dimension conforming to the shape and dimension of the entire container.

It is further noted that claims 1 and 10 do not recite wherein the sandwich like product is contained within the “non-beverage food product enclosing portion” and can therefore be in another portion of the sealed container. As such, the claims are unclear as to how the sandwich like product can be vendable on its own, since the sealed enclosure within which the sandwich is contained could not be vended on its own.

3. Claims 1-6, 8-9 and 23-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites the limitation “single serving sized beverages.” The term is considered new matter. The term, in and of itself, subjective as to what can be considered a single serving. For instance, a bottle of a beverage can actually contain two servings. In any case, applicant does not have support in the specification for this limitation as originally filed.

Claim 23 recites the limitation “that are non-concealed and known to the purchaser” and “a purposely purchased” end product. This term is considered new matter. The applicant does not have support for these limitations in the specification. Nowhere in the specification is it stated that the products are non-concealed and known to the purchaser and are purposely purchased.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 5. Claims 1-6 8-13 and 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1 recites the limitation "said vendable container." There is insufficient antecedent basis for this limitation in the claim. The limitation is unclear as to what is being referred to in the recitation "said vendable container."

Claim 1 recites the limitation "single serving sized beverages." The term is, in and of itself, subjective as to what can be considered a single serving. For instance, a bottle of a beverage can actually contain two servings.

Claims 9 and 13 recite wherein the container is comprised of separable compartments separably affixed together for dispensing two disparate food products. It is noted, however that claims 1 and 10 recites wherein "a sandwich like product contained within said sealed enclosure of said cylindrical container and being formed with a shape and dimension conforming to the shape and dimension of said vendable container." In light of the rejection under 35 U.S.C. 112, second paragraph regarding the limitation "said vendable container", claims 9 and 13 appear to contradict claims 1 and 10. That is, claims 9 and 13 recite two sealed compartments that are attached together, however claims 1 and 10 appear to recites wherein a sandwich like product is in the sealed enclosure and conforms to the shape of some vendable container. The

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claims are unclear as to whether there is only one container or separate containers that are secured together. The amendment to claims 1 and 10 make this unclear.

Claim 23 recites the limitation "ready to consume." The limitation does not adequately define the metes and bounds of the claim since the limitation is not clear as to what is considered a product that is ready to consume.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bezek et al. (US 6472007) for the reasons given in the previous Office Action, mailed January 24, 2008.

Regarding the new limitation of the opening mechanism providing access to the interior of said producing enclosing portion through other than said top or said bottom of said container for the intended consumption of the contents of the container, it is noted that Bezek et al. discloses the opening mechanism between the top and bottom end of the container (figure 9b).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1, 10 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner (US 2384863) in view of Savage et al. (US 20030071036) and Krikland (US 6006945).

The claims are rejected for the reasons given in paragraph 12 of the previous Office Action, mailed January 24, 2008. Regarding the new limitation in claim 1 of the “said sealed enclosure of said cylindrical container being formed with a shape and dimension conforming to the shape and dimension of said vendable container” it is noted that Kirkland, for instance teaches vendable containers having a size and shaped that conforms to the dimension of a vendable container. Brabson has been cited as

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further evidence that it was conventional in the art to provide a container that can comprise both beverage and non-beverage food items (column 6, lines 52-67 and column 7, line 53 to column 8, line 3). Therefore to substitute one conventional vendable container for holding food products with another conventional vendable container for holding food products for its art recognized and applicants' intended function would have been an obvious matter of choice and/or design to the ordinary skilled artisan. Furthermore, in light of the rejection under 35 U.S.C. 112, second paragraph, above, it is noted that the new limitation of "said vendable container" is not clear as to what "vendable container" is referring to. In any case, the sandwich like product contained within the sealed enclosure, as taught by the combination is still formed with a shape and dimension conforming to the shape and dimension of a vendable container. The amendment is not specific to what vendable container the sandwich shape should conform.

Regarding the particular shape of the container, it is noted that Kirkland teaches cylindrical containers that are vended and also comprise food products. To therefore modify the combination and employ a particular, conventional, shaped container for vending a food product, such as a cylindrical container would have been obvious to one having ordinary skill in the art. Such a modification would also have protected the sandwich from damage.

Regarding claim 23, it is noted that the combination teaches a sandwich like product that is ready to consume and also contains another disparate products such as condiments, which are "for spreading on the sandwich" (Page 2, left column, lines 1-4).

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Since the condiments that are included are for spreading on the sandwich, it would have been obvious that the condiments would have been separately packaged from the hot dog.

Regarding the opening mechanism, Kirkland teaches that it has been conventional in the art to package a vendable container wherein the opening mechanism for accessing the contents is located other than on the top or the bottom of the container (figure 4). Savage teaches a that it was conventional to package a product wherein the opening mechanism is on the side of the package, and thus not on the top or bottom (figure 3, item 120). To therefore substitute one conventional opening mechanism to accessing the contents of the package for another conventional opening mechanism for accessing the contents of the package would have been an obvious matter of choice and/or design for its art recognized and applicant's intended function, of accessing the contents within the container, in view of the art taken as a whole.

11. Claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nedblake Jr. (US 5664671) in view of Bezek et al. (US 6472007) and Yu (US 5279841), for the reasons given in the previous Office Action, mailed January 24, 2008 and in further view of Brabson (US 6415940) and Kirkland (US 6006945).

Regarding the new limitation in claim 1 of the "said sealed enclosure of said cylindrical container being formed with a shape and dimension conforming to the shape and dimension of said vendable container" and the new limitation to claim 10, it is noted

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that Yu, for instance teaches vendable containers having a size and shaped that conforms to the dimension of a vendable container. Brabson has been cited as further evidence that it was conventional in the art to provide a cylindrical container that can comprise both beverage and non-beverage food items (column 6, lines 52-67 and column 7, line 53 to column 8, line 3). Therefore to substitute one conventional vendable container for holding food products with another conventional vendable container for holding food products would have been an obvious matter of choice and/or design to the ordinary skilled artisan. Such a modification would have, for instance, reduced the amount of material required to package disparate products together. Furthermore, in light of the rejection under 35 U.S.C. 112, second paragraph, above, it is noted that the new limitation of “said vendable container” is not clear as to what “vendable container” is referring to. In any case, the sandwich like product contained within the sealed enclosure, as taught by Nedblake Jr. is still formed with a shape and dimension conforming to the shape and dimension of a vendable container. Similarly, regarding claim 10, the sandwich like product is still contained within a sealed enclosure that is sized to conform to a vendable sealed enclosure of said container.

Further regarding claim 23, Bezek et al. teaches that it was conventional in the art to employ opening mechanism that were on a side of the package other than the top or the bottom (see figure 9b). Similarly, Kirkland has further cited to teach the conventionality of opening mechanisms on other than the top and the bottom of the container (Figure 4). To therefore substitute one conventional opening mechanism for another conventional opening mechanism would have been an obvious matter of choice

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and/or design, for its art recognized and applicant's intended function, of accessing the contents within the container.

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24, above in paragraph 11 and in further view of Pinyot (US 6971521), for the reasons given in the previous Office Action, mailed January 24, 2008.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4, 6, 8-11, 13, 16, 17, 23 and 24, above in paragraph 11 and in further view of Sanford (US 1830246), for the reasons given in the previous Office Action, mailed January 24, 2008.

14. Claims 1-4, 6,8, 9-11, 13, 16-17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinyot (US 6971521) in view of Nedblake Jr. (US 5664671), Bezek et al. and Yu, for the reasons given in the previous Office Action, mailed January 24, 2008, and in further view of Brabson (US 6415940).

Regarding the new limitation in claim 1 of the "said sealed enclosure of said cylindrical container being formed with a shape and dimension conforming to the shape and dimension of said vendable container" it is noted that Pinyot, for instance teaches vendable containers having a size and shaped that conforms to the dimension of a vendable container. Brabson has been cited as further evidence that it was

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conventional in the art to provide a container that can comprise both beverage and non-beverage food items (column 6, lines 52-67 and column 7, line 53 to column 8, line 3).

Therefore to substitute one conventional vendable container for holding food products with another conventional vendable container for holding food products would have been an obvious matter of choice and/or design to the ordinary skilled artisan.

Furthermore, in light of the rejection under 35 U.S.C. 112, second paragraph, above, it is noted that the new limitation of “said vendable container” is not clear as to what “vendable container” is referring to. In any case, the sandwich like product contained within the sealed enclosure, as taught by the combination, is still formed with a shape and dimension conforming to the shape and dimension of a vendable container.

15. Claims 1-4,6,7-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezek et al. (US 6472007) in view of Nedblake Jr. (US 5664671) and Yu (US 5279841) and Kafentzis et al. (US 6756068) for the reasons given in the previous Office Action, mailed January 24, 2008 and in further view of Brabson (US 6415940).

Regarding the new limitation in claim 1 of the “said sealed enclosure of said cylindrical container being formed with a shape and dimension conforming to the shape and dimension of said vendable container” and the new limitation to claim 10, it is noted that Yu, for instance teaches vendable containers having a size and shaped that conforms to the dimension of a vendable container. Brabson has been cited as further evidence that it was conventional in the art to provide a cylindrical container that can

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comprise both beverage and non-beverage food items (column 6, lines 52-67 and column 7, line 53 to column 8, line 3). Therefore to substitute one conventional vendable container for holding food products with another conventional vendable container for holding food products would have been an obvious matter of choice and/or design to the ordinary skilled artisan. Such a modification would have, for instance, reduced the amount of material required to package disparate products together. Furthermore, in light of the rejection under 35 U.S.C. 112, second paragraph, above, it is noted that the new limitation of "said vendable container" is not clear as to what "vendable container" is referring to. In any case, the sandwich like product contained within the sealed enclosure, as taught by Nedblake Jr. is still formed with a shape and dimension conforming to the shape and dimension of a vendable container. Similarly, regarding claim 10, the sandwich like product is still contained within a sealed enclosure that is sized to conform to a vendable sealed enclosure of said container.

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied above in paragraph 16, to claims 1-4,6,7-13 and 16-17, and in further view of Sanford (US 1830246) for the reasons given in the previous Office Action, mailed January 24, 2008.

17. Claims 23 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (US 5924596) in view of Kirkland (US 6006945) for the reasons given in the previous Office Action, mailed January 24, 2008.

Regarding the new limitation of the particular opening mechanism, it is noted that Kirkland teaches the conventionality of opening mechanisms on other than the top and the bottom of the container (Figure 4). To therefore employ a conventional opening mechanism would have been an obvious matter of choice and/or design, for its art recognized and applicant's intended function, of accessing the contents within the container.

18. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable Rea et al. (US 5950913) in view of Nedblake Jr. (US 5664671), Bezek et al. and Yu.

Rea et al. disclose at least two disparate products which are food products (Figure 1, Items P and C) in a sealed product enclosing portion (Figure 1, Item 11) with an opening means for accessing the interior of the container (Figure 1, Item 10). It is noted that the container of Rea et al. would have been capable of being dispensed from the containerized beverage pathways of vending machines. In light of the rejection under 35 U.S.C. 112, second paragraph regarding the limitation "ready to consume" it is noted that the food products taught by Rea are considered ready to consume, is it would have been conceivable that even dough, which is not completely cooked would still have been consumable by a consumer. As an example, it would have been well known to the ordinarily skilled artisan that uncooked cookie dough, for instance, which is eaten when its uncooked. In any case, it is noted that Nedblake, Bezek et al. and Yu have been relied on to teach that it has been conventional in the art to package cooked products as well, which can then be vended. Once it was known in the art to package

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two conventional disparate food products together, the particular conventional products packaged together would have been an obvious matter of choice and/or design.

Regarding instant claim 24, Rea et al. disclose at least one product is a comestible product, such as item P.

Response to Arguments

19. The rejection of claims 1-9, 23-26 and 27 under 35 U.S.C. 112, second paragraph has been withdrawn as a result of the amendment to the claims.

20. The rejection of claims 1-6, 8-9, 10-13, 16-17 and 23-27 as being rejected under 35 U.S.C. 112, first paragraph has been withdrawn as a result of the amendment to the claims.

21. As a result of the amendment to claim 23, reciting an opening mechanism providing access through other than said top or said bottom of said container , the rejection of claims 23-24 under 35 U.S.C. 102(b) as being anticipated by Howes et al. has been withdrawn.

22. On page 10 of the response, Applicant asserts that Bezek does not disclose an opening mechanism providing access to the interior of the container other than through the top or the bottom of the container. It is noted, however, that Bezek discloses

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wherein the vendable container includes a twist off portion (figure 9b, for instance) for accessing the interior of the container wherein the access is other than from the top or bottom.

23. Regarding the reference to Rea, et al., Applicant asserts that Rea does not disclose that the products are ready-to-consume, since Rea discloses a collection of dough, spices and icing that the consumer must combine prior to the consumption of the intended end product. In light of the rejection under 35 U.S.C. 112, second paragraph, above, since what one would deem ready to consume would have been subjective to the tastes of the consumer, the products of Rea are considered ready to consume. In this case, dough, regardless of whether it is cooked would still have been considered ready to consume, as would icing. In any case, applicant's arguments are moot in view of the new grounds of rejection above, necessitated by amendment.

24. On page 11 of the response, Applicant urges that Warner is directed to a device for heating a hot dog that has condiments already placed on the hot dog and therefore the hot dog cannot be placed in a sealed and enclosed container, since heating the product would cause moisture the moisture in the condiments and the hot dog to build up steam pressure and a possible explosion might occur.

This argument has been considered but is not deemed persuasive. It is noted that Warner teaches that the condiments are included and are available for spreading on the sandwich. This therefore does not mean that the condiments are already on the

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hot-dog but rather are available for spreading. Nevertheless, the condiments are obvious packaged separately with the hot dog.

On page 12 of the response, Applicant further urges that Savage does not disclose a cylindrical container for dispensing. This argument has been considered but is not deemed persuasive. It is noted that Savage teaches in one embodiment, a rectangular container. Nevertheless, Kirkland has been relied on to teach other shaped containers, such as cylindrical containers. To therefore modify the combination and employ a cylindrical container would have been an obvious substitution of one conventional shaped container for another conventional shaped container. Such a modification would have, for instance, further conformed to the shape of the hot dog and thus provided protection to the hot dog.

25. On page 13 of the response, Applicant asserts that the lower container of Nedblake is not itself structured for being dispensed from such structured vending machines without being coupled to a bottle, and therefore it would have been clear that the flattened, disk-shaped container of Nedblake would not be dispensable through pathways of a vending machine structured to vend cylindrically containerized beverages. Applicant further asserts that neither Bezek nor Yu disclose providing a sandwich product in a vendable container as claimed. These arguments have been considered but are not deemed persuasive. Firstly, it is noted that the container of Nedblake would still have been capable of being vended from a vending machine structured to vend cylindrically containerized beverages, especially since the

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amendment is not specific as to what "vendable container" applicant is referring. Even further, the size and shape of the sandwich-like product would still have a shape and size to be vendable, especially since Nedblake actually vends the sandwich in combination with another food product. It is known in the art that vending machines exist that can vend both cylindrical beverage containers as well as other shaped containers. It appears that the amendment to claim 1 attempts to define the particular shape of the container in which the sandwich like product is contained. Nevertheless, this limitation is unclear as to what is "said vendable container." In any case, the container for the sandwich would still have been capable of being vended. It is further noted that the claims only specify that the container has a non-beverage food product enclosing portion and the sandwich like product is within the sealed enclosure. This does not limit the number of compartments or portions within the entire container. Even further, it is noted that applicant's arguments are not consistent with the claim language. Specifically, claims 9 and 13, for instance recites wherein each of the compartments are separately sealed and then secured together, similar to applicant's figure 3. Based on applicant's arguments, even applicant's structure would not have been capable of being vended individually, since each of the compartments would have been smaller in size than the compartments joined together. Applicant makes a similar argument with respect to claim 10. The claim remains rejected for the reasons discussed above with respect to claim 1. Furthermore, it is noted that the amendment to claims 1 and 10 that the sandwich-like product must be formed with a shape and dimension conforming to the shape and dimension of a vendable container. In the case of Nedblake, it is noted

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that the sandwich is clearly in a shape and dimension conforming to that of a vendable container. In any case, Brabson has been relied on as further evidence that it was conventional to employ containers with compartments such that the container maintains its size regardless of any compartments. To therefore modify the combination and substitute one conventional vendable container for another conventional vendable container would have been an obvious matter of choice and/or design for its art recognized and applicant's intended function. Even further such a modification would have provided a more efficient container requiring less material to manufacture and thus ease of construction.

Applicant's arguments with respect to claim 23 and the particular type of opening mechanism are moot in view of the new grounds of rejection, above, necessitated by the amendment to the claim.

26. On page 15 of the response, Applicant asserts that claim 5 is rejected for the reasons discussed above with respect to claim 1. This is not persuasive for the reasons discussed above. Applicant further urges that Sanford cannot be combined with Nedblake because Sanford teaches applying a follower or extruder to facilitate extrusion of the sandwich from the envelope. This argument has been considered but is not deemed persuasive. It is noted that Sanford teaches that it has been conventional to wrap a sandwich to protect it, and then place it in a secondary container. To therefore provide a wrapping for the sandwich of Nedblake would have been obvious for its art recognized and applicant's intended function.

27. On page 16 of the response, regarding the rejection of claims 1-4, 6, 8-11, 13, 16, 17 and 27 as being unpatentable over Pinyot in view of Nedblake Jr. Bezek et al. and Yu, it is noted that applicant provides the same reasoning for traversing the rejection as discussed above, with respect to claims 1 and 10. These arguments are not persuasive for the reasons discussed above.

28. On page 17 of the response, regarding the rejection of claims 1-4, 6, 7-13 and 16-17 as being unpatentable over Bezek et al. in view of Nedblake Jr., Yu and Kafentzis et al. it is noted that applicant provides the same reasoning for traversing the rejection as discussed above, with respect to claims 1 and 10. These arguments are not persuasive for the reasons discussed above.

29. On page 18 of the response, applicant asserts that the package of Kaufman is not vendable since "shrink wrap is well known to those of skill in the art to not be vendable. It is noted however, that Kaufman explicitly teaches vending the product. Therefore applicant's arguments are not convincing.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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